



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1996

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR96-0941

Dear Mr. Dempsey:

You have asked if certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39015.

The Garland Police Department ("the department") received a request for information concerning the arrest of a juvenile. The requestor, a parent of the juvenile, also sought "reports, documents, and statements" from an internal affairs investigation of a complaint filed against various police officers in connection with the arrest. You contend that the information at issue is confidential pursuant to section 552.101 of the Government Code. Section 552.101 provides that records made confidential by law may not be released to the public.

The requestor asked for "paperwork and reports generated stemming from the arrest" of the juvenile. You state that the department has provided the requestor with some responsive documents, but that the department is prohibited from providing the requestor with the juvenile's arrest report, fingerprint card, or the Texas Department of Public Safety Juvenile Justice Reporting Form. You contend that this information is made confidential pursuant to sections 58.001 and 58.007 of the Family Code.

Section 58.007 of the Family Code provides for confidentiality of juvenile records under certain circumstances. This office recently issued Open Records Decision No. 644 (1996) (enclosed), which concludes that "[s]ection 58.007 of the Family Code does not make confidential juvenile law enforcement records concerning conduct occurring on or after January 1, 1996, that are maintained by law enforcement agencies." As the conduct in this situation occurred after January 1, 1996, and the records at issue are held by a law enforcement agency, the information is not made confidential under section 58.007.

Although the juvenile records at issue are not confidential under section 58.007, you contend that the department is required by law to withhold the records at issue. Section 58.001(c) of the Family Code provides as follows:

A law enforcement agency may forward information, including photographs and fingerprints, relating to a child who has been detained or taken into custody by the agency to the Department of Public Safety of the State of Texas for inclusion in the juvenile justice information system created under Subchapter B only if the child is referred to juvenile court on or before the 10th day after the date the child is detained or taken into custody. If the child is not referred to juvenile court within that time, the law enforcement agency shall destroy all information, including photographs and fingerprints, relating to the child unless the child is placed in a first offender program under Section 52.031 or on informal disposition under Section 52.03.

We note that section 58.002 also provides for mandatory audits to verify the destruction of these records.

The request for information was received by the department on February 19, 1996, more than ten days after the juvenile was arrested. It is our understanding that the juvenile was not referred to juvenile court within the ten day period, nor placed in a first offender program or on informal disposition. You state that the records at issue are in a "to be destroyed" file but have not actually been physically destroyed. However, you contend that section 58.007(c), in conjunction with section 552.101 of the Government Code, prohibits the department from releasing the juvenile records at issue.

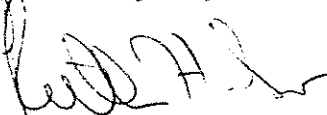
In Open Records Decision No. 644 (1996) at 5, we noted that although section 58.007 does not provide protection from public disclosure for juvenile records held by law enforcement agencies, the mandatory destruction provision of section 58.001 would provide some protection against public disclosure. We agree that, since the juvenile records fell within the section 58.001(c) mandatory destruction period at the time of the open records request, section 58.001 prohibits the department from releasing these juvenile records.

The requestor also specifically sought all information concerning the internal affairs investigation regarding a complaint filed against certain police officers involved in the arrest. You contend that the information at issue concerns an unsustained complaint against the officers and that records responsive to the request are maintained in the department's internal personnel file pursuant to section 143.089(g) of the Local Government Code. Internal files maintained pursuant to section 143.089(g) are confidential and not subject to disclosure. *City of San Antonio v. Texas Attorney Gen.*,

851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied); Open Records Decision No. 562 (1990) at 7. We agree that the department may not release the investigation information requested.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 39015

Enclosures: Submitted documents
Open Records Decision No. 644

cc: Mr. Lawrence Protho
Ms. Deborah Protho
2130 Sword Drive
Garland, Texas 75044
(w/o submitted documents; w/Open Records Decision No. 644))

¹An individual requesting information contained in this internal, confidential file must be referred to the civil service director or his designee. See *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). You state that the department has already made this referral.